

Town of



# AMHERST Massachusetts

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## DEPARTMENT DIRECTIVE

Accreditation Standard #	NUMBER: 1
<b>SUBJECT: ARREST</b>	<b>AUTHORIZED SIGNATURE:</b>  SCOTT P. LIVINGSTONE, CHIEF OF POLICE
Date of Issue: <u>09/30/2014</u> Effective Date: <u>09/30/2014</u> Subsequent Reviews: ANNUALLY	New _____ Amends <input checked="" type="checkbox"/> Rescinds _____ Review _____ Directive: #1

**PURPOSE:** This General Order indicates that a review was completed on the ARREST policy. It was found that a revision was needed to reflect the title change of Policy #19 Juvenile Operations.

The Administrative Division will see that this cover sheet is placed in all Departmental Policy and Procedure Manuals.

GENERAL ORDER  
INDEX III  
NUMBER 1  
**MARCH 6, 2002**  
**September 28, 2006**

## **POLICY AND PROCEDURES**

### **ARREST**

#### **GENERAL CONSIDERATIONS AND GUIDELINES**

The authority to arrest, thereby depriving a person of his/her liberty is one of the most serious and sensitive duties of a police officer. Whenever there is sufficient time and opportunity to do so, a warrant should be obtained in advance of an arrest. In any case where the offender does not create a threat to the public, or is not likely to flee, it is good police practice to obtain a warrant prior to arrest. This is particularly true for the less serious offenses.

By the very nature of police work, however, many arrests must be made without a warrant. Police officers should have a clear understanding of their powers, duties, and responsibilities under the law of arrest. If an unlawful arrest is made, any search made incidental to that arrest may be found unlawful and any evidence seized declared inadmissible. Any confession or admissions made may also be excluded, if made after an unlawful arrest.

Every police officer must also recognize that there is no such thing as a "routine arrest". Because of the unpredictability of human behavior, there is a potential element of danger in every arrest. Life threatening struggles have resulted from what appeared to be a simple misdemeanor or a routine motor vehicle stop. As a fundamental guideline in making arrests, officers should be alert and should anticipate the unexpected.

### **POLICY**

It is the policy of the Amherst police Department to ensure that when persons are arrested and taken into custody, all constitutional and statutory rights to which they are entitled will be provided at the time of their arrest and while in custody thereafter. In the event that an arrest is found to be invalid, the arrested person will be released from custody forthwith and the Chief of police notified.

## DEFINITIONS

**Arrest:** The power and authority of a police officer to apprehend and deprive persons of their liberty, as provided by law, in order that such persons may be brought before the court to answer to criminal charges.

**Probable cause:** Probable cause for arrest exists if, at the time of arrest, the facts within the knowledge of the arresting officer (or within the collective knowledge of the police) are reasonably trustworthy and are sufficient to warrant a person of reasonable caution and prudence to believe that the person being arrested has committed or is committing the crime for which the arrest is being made.

**Felony:** Any crime punishable by imprisonment in the State prison.

**Misdemeanor:** Any crime less than a felony.

**Breach of the Peace:** A violation of public order or decorum which disturbs the public peace and tranquility; or any act of disorderly conduct which disrupts the public peace.

**Arrest Warrant:** An order in writing, issued by an authorized court official, directed to officers authorized to serve criminal process, commanding them to arrest the person named or described therein and to bring such person before the court to answer to a charge of crime.

### I. ARRESTS IN GENERAL

- A. Whenever possible, arrests should be made with a warrant.
- B. An arrest should not be made to show authority or to vent personal feeling.
  - 1. The attitude of the offender should not be the determining factor in making an arrest.
  - 2. Verbal abuse alone is not sufficient justification for an arrest.
  - 3. An arrest should not be used to resolve a problem when other reasonable options are available.
- C. To effectively and lawfully execute an arrest there must be:
  - 1. An intention on the part of the police officer to make an arrest;
  - 2. The knowledge and understanding of that intent must be communicated to the person to be arrested; and
  - 3. Either a physical seizure or submission to the officer by the arrested person.

- D.** A duly authorized police officer may make a lawful arrest if any of the following conditions are met:
- 1. With a warrant**
    - a. Where the officer possesses a valid arrest warrant.
    - b. Where the officer making the arrest and detention has actual knowledge that a warrant then in full force and effect for the arrest of such person has in fact issued.
  - 2. Without a warrant**
    - a. For a felony, if the officer has probable cause to believe the person to be arrested committed or is committing a felony.
    - b. For a misdemeanor committed in the officer's presence which constitutes a breach of the peace, or for a misdemeanor where warrantless arrest is allowed by statute.<sup>1</sup>
- E.** In addition to having lawful authority, it is required under the Fourth Amendment that a police officer have "probable cause" in order to make a valid arrest without a warrant.
- F.** The element of probable cause must exist at the time of arrest. Subsequent events or information acquired later cannot be used to justify that arrest.
1. The information upon which an officer relies in making an arrest must be more than just rumor or mere suspicion, but it does not require sufficient evidence to justify a conviction. It does require a reasonable, common sense approach by a police officer and an honest judgment based upon a combination of factors, any of which standing alone might not be enough to justify an arrest but which, if viewed as a whole, constitutes probable cause.
  2. Probable cause to make an arrest is always an overriding consideration for every police officer. Whether or not an arrest is based on probable cause will depend on a variety of factors, and unless the offense is committed in the officer's presence, usually no single fact alone is controlling.
  3. Therefore, the totality of circumstances surrounding the arrest is of great importance. Each officer should be aware of the following

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<sup>1</sup> CALEA 1.2.5

types of circumstances which have been looked to in establishing probable cause:

- a. direct observations of a police officer;
- b. knowledge of the prior criminal record or criminal activity of the person arrested;
- c. flight accompanied by other factors;
- d. evasive answers and/or conflicting stories;
- e. time of day or night;
- f. history of criminal activity in the particular area;
- g. experience of the officer;
- h. Reliable information from other sources such as police officers, victims, witnesses, and other informants who have been shown to be reliable in accordance with the standards set by the court.

- G.** Once an arrest is made it is the responsibility of the arresting officer or officers to ensure that arrestees while in their custody do not injure themselves or others, and that they do not escape or dispose of evidence.
- H.** At the time of arrest, a “**search incidental to arrest**” may be conducted. This search must be limited in scope to the area within the “immediate control” of the suspect and must be conducted contemporaneously with the arrest unless there is a written policy relating to a different search such as an inventory search.
- 1. A search incident to arrest does not give justification for searching locked or closed areas and the search must be limited to a search for weapons or evidence of the crime for which the arrest was made. The search for weapons must end when the prisoner is secure, poses no threat, and has no means of escape. The search must then be limited to evidence relative to the crime for which the arrest was made.
  - 2. If there is no physical evidence associated with the crime, the search incidental to arrest must be limited to weapons only and end when the prisoner is secure.

3. When the arrested person is brought to the station, an “**inventory search**” of their possessions, including closed containers, is mandated by Department policy.
    4. If the arrest occurred as the result of a motor vehicle stop and the Department is taking custody of the vehicle, then an inventory of the contents is required by policy before it is towed. If contraband is observed in the vehicle during the inventory, it may be seized pursuant to the ‘motor vehicle exception’ without a search warrant.(See Department policy regarding Inventory Searches)
  - I. At the time of arrest, unnecessary conversation should be avoided and any orders or statements to the arrested persons should be clear and brief.
- J. Persons arrested shall be given the **Miranda Warnings** prior to interrogation.  
(See Policy and procedure entitled **Interrogating Suspects and Arrestees**)
1. The warnings should be read from a card or other permanent record of them to ensure that none are omitted. This procedure is beneficial for other reasons:
    - a. The card itself can be introduced as evidence;
    - b. Officers have tangible proof that they have not relied solely on memory;
    - c. The suspect can also be permitted to read the card.
  2. Each officer giving the warning shall ask and verify that the person arrested has heard and understood the warnings given.
  3. No questioning of arrested persons shall take place until these warnings have been given. However, if suspects freely choose to divulge information without questioning there is no violation of rights simply because they were not given these warnings. There is no requirement that an officer prevent suspects from continuing to talk and, whenever statements are made voluntarily and with no compulsion, such statements shall be noted and incorporated as part of the officer’s official report. Officers must remember that in order to question a person after such a statement is made, Miranda must be given.

**Note:** Officers must be aware that recent Supreme Court rulings have stated that when suspects have not “officially” been placed under arrest but are not free to leave, and questioning continues, Miranda warnings must be given.

- K.** Upon arrest of a Juvenile, the arresting officer shall notify the parent or guardian of the juvenile and a juvenile probation officer. (See Policy #19 **Juveniles Operations** for further instruction on juvenile arrests)
- L.** The persons arrested should be handcuffed and promptly transported to the Amherst Police Station in accordance to department procedures. (See Policy #5 **Transporting Detainees**).
- M.** Upon arrival at the station, the person(s) arrested should be booked and processed in accordance with current departmental procedures.
- N.** After department booking procedures are completed, the persons arrested shall be brought to court forthwith if it is in session, or if it is not, at the next regular sitting of the court.
- O.** Arresting officers will make a full and complete report of any arrests made, with or without warrants, in accordance with Amherst police Procedures.<sup>2</sup>
- P.** Force should only be used when there is resistance or reasonable certainty of resistance. The amount of force shall be restricted to that which is reasonable, necessary, and proper for the safe custody of the arrestee, or for overcoming any resistance that may be offered. An arrestee has no right to resist arrest, lawful or unlawful, by a police officer, unless the officer uses excessive force.

## II. ARRESTS WITH WARRANTS<sup>3</sup>

- A.** An arrest warrant issued pursuant to a complaint must be founded upon probable cause supported by oath or affirmation but is not necessary to recite the facts that constitute probable cause in the complaint.
- B.** A warrant shall be directed to and executed in any place within the Commonwealth.
- C.** The district court having jurisdiction over the town of Amherst may authorize the issuance of an arrest warrant in any case except where the juvenile is less than seven years of age.

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<sup>2</sup> CALEA 82.2.1(A)/ 82.3.7

<sup>3</sup> CALEA 1.2.5

- D.** The warrant must be obtained from the proper authority and must be signed by the authorized court official issuing it. The following judicial officers have statutory authority to issue arrest warrant;
1. Justices of the Supreme Judicial Court, the Superior Court, and the District Court Departments; and
  2. A Clerk Magistrate, Assistant Clerk Magistrate, Temporary Clerk Magistrate of a District Court Department.
- E.** Prior to serving an arrest warrant, an officer should examine it carefully to determine what the officer's powers are under it and whether:
1. It has been issued by a court of competent jurisdiction and authority;
  2. It clearly names and describes the person to be arrested or, if his/her name is unknown, any name or description by which he/she can be identified with reasonable certainty;
  3. **NOTE:** A so-called "John Doe" warrant without a further satisfactory description is unlawful and void.
  4. The officer is authorized to serve it;
  5. It clearly describes the offense for which the arrest is to be made;
- F.** A person arrested on a warrant or otherwise taken into custody by a police officer has a right to know the true grounds for such arrest.
1. The officer need not have the warrant in his/her possession at the time of arrest; however, upon request the defendant shall be shown the warrant as soon as possible.
  2. If the officer does not have the warrant in his/her possession at the time of the arrest, the defendant shall be informed that a warrant has been issued and of the offense charged.
  3. If the officer does not then know of the offense charged, he/she should inform the defendant thereof within a reasonable time after the arrest.
- G.** The officer executing the warrant shall make a return thereof to the issuing court.

- H.** Although an arrest warrant can be executed anywhere in Massachusetts, generally it is to be executed by an officer of the City or Town where the arrest is to be made.

### **III. ARRESTS WITHOUT A WARRANT**

- A.** An arrest without a warrant may be lawfully made when certain circumstances exist:
1. For a felony committed in the officer's presence or on probable cause that a felony has been committed;
  2. For a misdemeanor committed in the officer's presence and causing or threatening to cause a breach of the peace which is continuing or only briefly interrupted;
  3. For a misdemeanor not amounting to a breach of the peace committed in the officer's presence when such an arrest is authorized by law;
  4. For certain misdemeanors for which arrest is allowed even though such misdemeanors were not committed in the officer's presence.
- B.** All officers should be able to point to specific factors, which justify an arrest without a warrant. Examples of such factors are:
1. Whether they saw the crime being committed;
  2. Whether they saw the suspect run away;
  3. Whether they received prompt and direct replies to questions or whether the suspect was vague and confused;
  4. Whether they had experience in similar situations; and
  5. Whether they received information from other persons, and if so, whether they were certain of the reliability of that person and the information received.<sup>4</sup>

### **IV. JURISDICTION**

- A.** Members of the Amherst Police Department have authority to enforce all State laws and municipal by-laws only within the boundaries of the Town of Amherst.

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<sup>4</sup> 1.2.5

- B. In reservations and buildings owned or controlled by the United States for whatever purpose, the authority of the United States is supreme.
- C. In all property owned and under the control of the Trustees of the University of Massachusetts, the University of Massachusetts department of Public Safety has police authority.
- D. The responsibility of policing the places described in section B and C is relegated to other authorities. However, any Amherst Police Officer who witnesses the commission of a crime in a Federal building or reservation or on property of the University of Massachusetts, or is engaged in the pursuit of a criminal who runs thereto, or is called upon for assistance by a guard, police officer, or citizen in such a place would be justified to act in the same manner as if they were in an unrestricted part of Amherst. Property owned by Amherst College and Hampshire College shall be treated as privately owned property in the Town of Amherst.
- E. An officer may make an arrest with a valid arrest warrant anywhere within the boundaries of the Commonwealth of Massachusetts. An officer may make a warrantless arrest outside of Amherst when;
  - 1. They are in fresh and continued pursuit;
  - 2. If the offense occurred in the arresting officer's presence;
  - 3. The offense occurred within the Town of Amherst; and
  - 4. It is an offense for which a warrantless arrest is authorized.
- F. No Amherst officer is authorized to make an arrest beyond any Massachusetts boundary line.
- G. In the event that the Amherst Police Department is called upon for assistance by any police department with whom we do not have a written mutual aid agreement, and arrests are made, they will be done so under the authority of the officer(s) they are assisting. If a written mutual aid agreement exists, all actions taken will be done pursuant to that agreement
- H. An officer may exercise his/her citizen's arrest powers. For example, any citizen may make an arrest for a felony if a felony has, in fact, been committed.

## V. ARRESTS IN DWELLING

- A. Police officers may enter the dwelling of a person named in an arrest warrant.
    - 1. An officer may enter a suspect's home to serve an arrest warrant without obtaining a search warrant, provided there is reason to believe the suspect is there.
    - 2. To serve an arrest warrant on private property, police officers should first knock and announce their authority and purpose (unless the warrant is a "No Knock and Announce Warrant") and wait a reasonable period to be admitted.
    - 3. Once a reasonable time has passed and the officers have not been voluntarily admitted, and there is probable cause to believe that the wanted person is on the premises, officers may use whatever force is reasonably necessary to gain entrance. NOTE: the least amount of force that will safely accomplish an entrance should always be used.
    - 4. If police officers reasonably believe that announcing their presence and purpose will endanger themselves or others, or will result in the escape of the wanted person or the destruction of evidence, they may dispense with the announcement of authority and purpose. In such cases they may attempt to trick the suspect into voluntarily opening the door, or gain entrance by a ruse, if this will result in a safe and successful apprehension with less destruction of property or risk of harm to persons.
  - B. If an Amherst Officer seeks to arrest a person in someone else's dwelling they may do so;
    - 1. If lawful consent to enter is granted; or
    - 2. If exigent circumstances are present which excuse the failure to obtain a search warrant;
    - 3. Otherwise, they must obtain a search warrant.
  - C. Exigent or emergency circumstances necessary to excuse the failure to obtain a search warrant before entering a dwelling to make an arrest, are determined by the following factors:
    - 1. The crime was one of violence or a showing that the suspect is armed;
    - 2. There is a clear demonstration of probable cause to arrest;

3. There is strong reason to believe the suspect is in the dwelling;
4. The likelihood that the suspect would escape if not apprehended immediately;
5. Whether the entry can be made peaceably; and/or
  
6. Whether the entry would be in the nighttime or could be made in the daytime when clerk magistrates are more readily available.

D. With regard to making a warrantless arrest in a dwelling, police should first determine whether a warrantless entry and arrest is allowed by law. Generally, no arrest warrant (or search warrant) is required to arrest a person who is in public. However, with regard to making an entry and arrest in a dwelling the following standards apply:

1. If the arrest pursuit was set in motion in public, the officer may make a hot pursuit warrantless entry into a private dwelling if the suspect runs into the dwelling.
2. If police seek to arrest a person in that person's own dwelling they may do so;
  - a. if lawful consent to enter is granted; or
  - b. if exigent circumstances are present which excuse the failure to obtain an arrest warrant;
  - c. Otherwise, police must obtain an arrest warrant.
3. If police seek to arrest a person in someone else's dwelling they may do so;
  - a. if lawful consent to enter is granted; or
  - b. if exigent circumstances are present which excuse the failure to obtain a search warrant;
  - c. Otherwise, they must obtain a search warrant.

## VI. POLICE DISCRETION TO ARREST<sup>5</sup>

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<sup>5</sup> CALEA 1.2.6/1.2.7/42.2.1(B)

- A. Although police officers must always be guided by the intent and purpose of the law, there are limited circumstances in the discretion of the officer involved when the public interest would be better served by not making an arrest, even though there is justification for such action. Such circumstances would include the following:
1. When an arrest could aggravate community conflict or possibly precipitate a serious disorder;
  2. When there is a greater priority to respond to a more serious crime or to an urgent public emergency;
  3. In neighborhood quarrels, noisy parties, landlord tenant problems and minor disturbances of the peace where no serious crime has been committed and the officer can successfully act as a mediator;
  4. In minor juvenile offenses where a warning and a talk with the parents can avoid a court appearance;
  5. In other minor offenses where a summons can effectively accomplish the intended purpose.

## VII. **OFFICER SAFETY**

- A. Officer safety is always the paramount concern in any arrest situation. Therefore, it is recommended that whenever possible, two or more officers should effect an arrest. Arresting officers should never act in a routine manner and should take all necessary steps to ensure their own personal safety.
- B. Officers should be certain that the dispatcher knows where they are prior to attempting the arrest.
- C. A well-trained and alert officer who utilizes common sense can protect themselves from serious injury in most situations.

## VIII **OFF DUTY ARRESTS**

Amherst police officers are authorized to make off-duty arrests when it is necessary and the situation does not allow the officer to wait for on-duty personnel. When no immediate police intervention is demanded, the off-duty officer should take an “observe and report” role rather than to endanger themselves by trying to effect an arrest unassisted.